



COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

900 SOUTH FREMONT AVENUE
ALHAMBRA, CALIFORNIA 91803-1331
Telephone: (626) 458-5100
<http://dpw.lacounty.gov>

GAIL FARBER, Director

ADDRESS ALL CORRESPONDENCE TO:
P.O. BOX 1460
ALHAMBRA, CALIFORNIA 91802-1460

January 04, 2011

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

17 JANUARY 4, 2011

Sachi A. Hamai
SACHI A. HAMAI
EXECUTIVE OFFICER

Dear Supervisors:

**USE AGREEMENT FOR BALLONA CREEK LOW-IMPACT DEVELOPMENT RAIN
INFILTRATION GARDENS BETWEEN THE SANTA MONICA BAY RESTORATION
FOUNDATION AND THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT
(SUPERVISORIAL DISTRICT 2)
(3 VOTES)**

SUBJECT

This action is to authorize the Chief Engineer of the Los Angeles County Flood Control District or her designee to enter into an Agreement with the Santa Monica Bay Restoration Foundation to provide Low-Impact Development Rain Infiltration Gardens on Los Angeles County Flood Control District property located along Ballona Creek within the City of Culver City.

IT IS RECOMMENDED THAT YOUR BOARD ACTING AS THE GOVERNING BODY OF THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT:

1. Find that this project is categorically exempt from the provisions of the California Environmental Quality Act.
2. Authorize the Chief Engineer of the Los Angeles County Flood Control District or her designee to enter into a Use Agreement with the Santa Monica Bay Restoration Foundation for the Ballona Creek Low-Impact Development Rain Infiltration Gardens within the City of Culver City and to take all steps necessary to implement the Use Agreement.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The purpose of the recommended actions is to find that the proposed project is exempt from the California Environmental Quality Act (CEQA) and to authorize the Chief Engineer of the Los Angeles

County Flood Control District (LACFCD) or her designee to execute, on behalf of the LACFCD, a Use Agreement substantially similar to the enclosed with the Santa Monica Bay Restoration Foundation (SMBRF). The purpose of the Use Agreement is to authorize the SMBRF, a primary stakeholder within the Ballona Creek Watershed, to construct, operate, and maintain the Ballona Creek Low-Impact Development Rain Infiltration Gardens along Ballona Creek within the City of Culver City.

The project will consist of two rain gardens within the LACFCD right of way along Ballona Creek. The two rain gardens will be located on the east side of Ballona Creek with one rain garden near Leahy Street and one near Pearson Street.

The project is designed to capture, treat, and infiltrate stormwater runoff to treat for metals, trash, nutrients, and hydrocarbons in the Ballona Creek Watershed. The project will provide aesthetic enhancements to a degraded area and will be designed to enhance water quality by restoring natural function and native riparian vegetation to the Ballona Creek Watershed.

Implementation of Strategic Plan Goals

The Countywide Strategic Plan directs the provision of Community and Municipal Services (Goal 3). The recommended improvements will enhance river aesthetics and water quality and provide recreational opportunities in the area, thereby improving quality of life for the residents of the County of Los Angeles.

FISCAL IMPACT/FINANCING

There will be no impact to the County General Fund.

There will be no monetary consideration paid for the Use Agreement.

There is no cost to the LACFCD for the proposed project. The SMBRF obtained a stimulus grant for the project.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The Use Agreement is for the use of portions of Ballona Creek from Jackson to Baldwin Avenues in the City of Culver City as shown in Exhibit A of the enclosed Use Agreement. The term of the Use Agreement is for 25 years, effective upon execution of the Use Agreement by both parties.

The Use Agreement is authorized by Section 2, paragraphs 5 and 14, of the Los Angeles County Flood Control Act. Paragraph 5 provides that the "improvement of existing facilities may involve landscaping and other aesthetic treatment in order that the facility will be compatible with existing or planned development in the area of improvement." Paragraph 14 authorizes the LACFCD "to provide, by agreement with other public agencies ... for the recreational use of the lands, facilities, and works of such district, which shall not interfere, or be inconsistent, with the primary use and purposes of such lands, facilities, and works by such district."

The enclosed Use Agreement has been reviewed and approved as to form by County Counsel.

ENVIRONMENTAL DOCUMENTATION

The SMBRF's project is categorically exempt from the provisions of the CEQA. The project is within a class of projects that has been determined not to have a significant effect on the environment in that it meets the criteria of Sections 15301 and 15304 of the CEQA Guidelines and Classes 1(e), 1(f), 1(x)(13) and (24), 4(a), 4(c), and 4(n) of the County's Environmental Reporting Procedures and Guidelines, Appendix G. In addition, the project is not in a sensitive environment and there are no cumulative impacts, unusual circumstances, or other limiting factors that would make any of the exemptions inapplicable based on the project records.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

There will be no negative impact on current services.

This action allows for the dual use of the LACFCD right of way without interfering with the primary mission of the LACFCD.

CONCLUSION

Please return one adopted copy of this letter to the Department of Public Works, Watershed Management Division.

Respectfully submitted,

A handwritten signature in black ink that reads "Gail Farber". The signature is written in a cursive, flowing style.

GAIL FARBER
Director

GF:GH:jtz

Enclosures

c: Chief Executive Office (Rita Robinson)
County Counsel
Executive Office

AGREEMENT NO. _____
LOS ANGELES RIVER – PARCELS _____

USE AGREEMENT

THIS USE AGREEMENT is entered into on _____, 2010, by and between the LOS ANGELES COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic (hereinafter referred to as the LACFCD), and the SANTA MONICA BAY RESTORATION FOUNDATION, a not-for-profit corporation (hereinafter referred to as the SMBRF).

RECITALS

WHEREAS, LACFCD owns the fee title or holds permanent easements over certain properties along the east side of Ballona Creek, between Jackson and Baldwin Avenues in the City of Culver City as shown on Exhibit A attached hereto and made a part hereof. These properties, specifically excluding the adjacent flood control channel and appurtenant structures, shall hereinafter be referred to as the PREMISES; and

WHEREAS, SMBRF proposes to develop, construct, operate, and maintain rain gardens with trails and other related recreational amenities as shown on Exhibit B (hereinafter referred to as the IMPROVEMENTS) on the PREMISES; and

WHEREAS, LACFCD and SMBRF are mutually interested in providing the recreational, aesthetic, and water-quality benefits of rain infiltration gardens; and

WHEREAS, LACFCD, while performing the primary function of flood control and water conservation, is willing to cooperate where feasible with SMBRF in SMBRF'S development, construction, operation, and maintenance of the IMPROVEMENTS on the PREMISES; and

WHEREAS, LACFCD and SMBRF desire to enter into this USE AGREEMENT to establish the terms and conditions applicable to SMBRF'S use of the PREMISES for the development, construction, operation, and maintenance of the IMPROVEMENTS.

NOW, THEREFORE, in consideration of these recitals and the faithful performance by LACFCD and SMBRF of mutual covenants herein contained, for the period of time herein set forth, LACFCD and SMBRF hereby mutually agree as follows:

1. AUTHORIZED USE:

- a. SMBRF is authorized and permitted to use the PREMISES for the development, construction, operation, maintenance, and use of the IMPROVEMENTS in accordance with the terms and conditions of this USE AGREEMENT and the permit obtained from LACFCD as described below. Any other use of the PREMISES or any portion thereof by SMBRF is expressly prohibited.
- b. SMBRF'S use of the PREMISES is nonexclusive and shall be subordinate to the primary uses and purposes of the PREMISES by LACFCD for flood control, water conservation, watershed management, and water quality, and SMBRF'S use of the PREMISES shall at no time interfere with LACFCD'S use of the PREMISES or the use of LACFCD'S adjacent property and/or improvements for any such purposes.
- c. LACFCD reserves the right to use or allow others to use the PREMISES for any and all lawful purposes in addition to flood control, water conservation, and watershed management, including, without limitation, public transportation, utilities, roads, parks and recreation, parking, public/private development, and/or other related uses together with incidental rights of construction and installation of facilities, ingress and egress, operation, and maintenance. The exercise of the rights reserved herein shall not be inconsistent with SMBRF'S use or constitute unreasonable interference.
 - i. Interruption of SMBRF'S use for a period at LACFCD'S sole discretion to permit construction and installation of other facilities shall not be deemed unreasonable interference.
 - ii. SMBRF shall be notified at least ninety (90) days prior to the commencement of any such construction or alteration.
 - iii. No improvements or structures shall be attached to, built upon, or otherwise unreasonably interfere with SMBRF'S use without the prior written approval of SMBRF.
- d. SMBRF acknowledges that it shall be solely responsible for obtaining any permits required by other affected agencies and the consent of the underlying fee owner(s) of LACFCD'S easement areas for the development, construction, operation, maintenance, and use of the IMPROVEMENTS.

2. CONSTRUCTION AND MAINTENANCE OF IMPROVEMENTS:

- a. SMBRF understands and acknowledges that it is required to comply with the requirements set forth in the California Environmental Quality Act (CEQA) and the CEQA Guidelines prior to implementing the IMPROVEMENTS and that SMBRF shall be the lead agency with respect to any and all CEQA compliance related to the IMPROVEMENTS. In addition to its other indemnification obligations as specified below, SMBRF hereby agrees to indemnify, defend, and hold harmless LACFCD, County of Los Angeles, and their elected and appointed officers, employees, and agents from and against any and all claims and/or actions related to the IMPROVEMENTS that may be asserted by a third party or public agency alleging violations of CEQA or the CEQA Guidelines.
- b. SMBRF shall bear all costs in connection with the construction of the IMPROVEMENTS, including preparation of plans and specifications and all construction costs and expenses.
- c. Prior to the commencement of any construction activity on the PREMISES by or on behalf of SMBRF, SMBRF shall obtain a permit from LACFCD including the approval by LACFCD of the plans and specifications for the IMPROVEMENTS. Permits shall be obtained by application to the County of Los Angeles Department of Public Works, Land Development Division, Permits and Subdivisions Section. This USE AGREEMENT will be referenced in the permit conditions.
- d. Upon completion of the construction of the IMPROVEMENTS, SMBRF shall provide LACFCD with approved as-built plans.
- e. SMBRF shall keep, inspect, and maintain the PREMISES and the IMPROVEMENTS in a safe, clean, and orderly condition and shall not permit trash and debris, including, but not limited to, rubbish, tin cans, bottles, and garbage to accumulate at any time, nor shall SMBRF commit, suffer, or permit any waste on the PREMISES or permit any acts to be done in violation of any laws or ordinances.
- f. SMBRF shall remove graffiti from the PREMISES and the IMPROVEMENTS and any other walks, fences, and signs that are located within the PREMISES in accordance with the following time periods:
 - i. Vulgar graffiti (i.e., profane, obscene, or racist) shall be removed within twenty-four (24) hours, Monday through Friday.
 - ii. All other graffiti shall be removed within seventy-two (72) hours, Monday through Friday.

- g. SMBRF shall replace or repair any property of LACFCD that becomes damaged by SMBRF (including any person entering the PREMISES at SMBRF'S invitation or with the consent of SMBRF, either expressed or implied) within a reasonable time to the satisfaction of LACFCD or shall compensate LACFCD for the damage within thirty (30) days of the SMBRF'S receipt of an invoice from LACFCD.

3. TERM:

- a. The term of this USE AGREEMENT shall be for twenty-five (25) years (Initial Term) subject to LACFCD'S right to terminate SMBRF'S use as provided for in Section 4 below.
- b. This USE AGREEMENT shall expire at the end of the Initial Term provided, however, LACFCD may extend the term of this USE AGREEMENT beyond the Initial Term subject to such terms and conditions as it deems appropriate upon receipt of a written request from SMBRF no earlier than twelve (12) months or later than six (6) months prior to the end of the Initial Term.

4. TERMINATION OF USE:

- a. LACFCD shall have the right to cancel and terminate SMBRF'S use of the PREMISES or any portion thereof by giving SMBRF at least one hundred eighty (180)-day prior written notice under the following conditions:
 - i. LACFCD proposes to implement or approve the implementation of a project to carry out any of the objects or purposes of the Los Angeles County Flood Control Act, including flood control, water conservation, and water quality; and
 - ii. LACFCD determines, in good faith, that the IMPROVEMENTS, or any of them, and/or SMBRF'S use of the PREMISES or any portion thereof, will be substantially incompatible with the proposed project; and
 - iii. LACFCD has notified SMBRF of the basis for the LACFCD'S determination that a substantial incompatibility will exist and has provided SMBRF with a reasonable opportunity to propose modifications to the IMPROVEMENTS or to SMBRF'S use of the PREMISES or portion thereof that will eliminate the incompatibility.
- b. LACFCD shall have the right to cancel and terminate SMBRF'S use of the PREMISES or any portion thereof by giving SMBRF at least thirty (30)-day prior written notice if SMBRF breaches any term or condition of this USE AGREEMENT.

- c. LACFCD shall have the right to immediately cancel and terminate SMBRF'S use of the PREMISES or any portion thereof or, in LACFCD'S sole discretion, to temporarily suspend such use in the event LACFCD determines, in good faith, that it is necessary for LACFCD to enter and take exclusive possession of the PREMISES or any portion thereof in order to respond to an emergency as defined in Public Contract Code, Section 1102.
 - d. SMBRF shall have the right to cancel and terminate its use of the PREMISES or any portion thereof pursuant to this USE AGREEMENT for any reason by giving LACFCD at least sixty (60)-day prior written notice.
- 5. REMOVAL OF IMPROVEMENTS AND RESTORATION OF THE PREMISES:
 - a. Upon the expiration or sooner termination of this USE AGREEMENT, SMBRF shall, at its sole expense, remove the IMPROVEMENTS and restore the PREMISES to a condition similar to or better than that which existed on the effective date of this USE AGREEMENT, reasonable wear and tear excepted.
 - b. Prior to commencing the removal of the IMPROVEMENTS, or any of them, SMBRF shall apply for and obtain a no-fee permit therefor from the County of Los Angeles Department of Public Works, Land Development Division, Permits and Subdivisions Section.
 - c. If SMBRF fails to remove the IMPROVEMENTS and restore the PREMISES or any portion thereof as provided for in the above Subsection 5a. within thirty (30) days of the expiration of this USE AGREEMENT or sooner termination of SMBRF'S use of the PREMISES or portion thereof, LACFCD may remove said the IMPROVEMENTS.
 - d. If LACFCD removes any of the IMPROVEMENTS pursuant to the above Subsection 5c., LACFCD shall submit a billing invoice to SMBRF indicating the costs and expenses incurred by LACFCD in connection with the removal of the IMPROVEMENTS and SMBRF shall reimburse LACFCD all such costs and expenses within thirty (30) days of the billing invoice.
- 6. MISCELLANEOUS TERMS AND CONDITIONS:
 - a. Indemnification
 - i. In accordance with Government Code, Section 895.4, LACFCD and SMBRF agree to apportion responsibility and indemnification notwithstanding any other provision of law as follows:

1. SMBRF shall indemnify, defend, and hold LACFCD, County of Los Angeles, and their respective officers, employees, and agents harmless from and against any claims, demands, liability, damages, costs, and expenses; including, without limitation, involving bodily injury, death, or personal injury of any person or property damage of any nature whatsoever arising from or related to the construction, reconstruction, maintenance, operation, use, or removal of any of the IMPROVEMENTS.
 2. LACFCD shall indemnify, defend, and hold SMBRF and its officers, employees, and agents harmless from and against any claims, demands, liability, damages, costs, and expenses; including, without limitation, involving bodily injury, death, or personal injury of any person or property damage of any nature whatsoever arising from any and all uses of the PREMISES by LACFCD.
- ii. SMBRF releases LACFCD and waives all right to damages for any loss, costs, or expenses SMBRF may sustain as a result of any damage to or destruction of any of the IMPROVEMENTS caused by LACFCD'S watershed management activities, including any flood control, water conservation, or water-quality activities on or adjacent to the PREMISES or by any flooding resulting from any inadequacy or failure of the LACFCD'S facilities.
 - iii. Each party to this USE AGREEMENT shall include the other within the protection of any indemnification clause contained in any ancillary contract relating to the PREMISES.
- b. Without limiting SMBRF'S indemnification of LACFCD, SMBRF shall procure and maintain insurance policies providing for the following insurance coverage in full force and effect during the term of this USE AGREEMENT:
 - i. Comprehensive general liability and property damage coverage with a combined single-limit liability in the amount not less than Two Million and 00/100 Dollars (\$2,000,000.00) per occurrence.
 - ii. Workers' Compensation coverage in such amount that will fully comply with the laws of the State of California and that shall indemnify, insure, and provide legal defense for both LACFCD and SMBRF against any loss, claim, or damage arising from any injuries or occupational diseases occurring to any worker employed by or any person retained by SMBRF in the course of carrying out the work or services contemplated in this USE AGREEMENT.

- iii. The County of Los Angeles, LACFCD, and their governing board, officers, agents, contractors, and employees shall be named as additional insured on all policies of liability insurance. SMBRF shall furnish to LACFCD an insurance policy evidencing SMBRF'S insurance coverage no later than ten (10) working days after execution of the USE AGREEMENT, but before SMBRF takes possession of the PREMISES. Upon renewal of said policy, SMBRF shall furnish to LACFCD a certificate evidencing SMBRF'S continued insurance coverage as required herein.
- iv. LACFCD may accept, should SMBRF elect to provide, a Certificate of Self-Insurance. The limits of such self-insurance coverage shall meet or exceed those stated herein.
- c. SMBRF and LACFCD shall have no financial obligation to each other under this USE AGREEMENT except as herein expressly provided.
- d. LACFCD, its Board, and any authorized officer, engineer, employee, and contractor through its agents or representatives shall have full right and authority to enter in and upon the PREMISES or any portion thereof at any and all reasonable times during the term of this USE AGREEMENT, all without interference or hindrance by SMBRF and its agents, officers, contractors, employees, or representatives for the purpose of inspecting the same and to serve or post any notice required or permitted by law for protection of any right or interest of LACFCD.
- e. Except as to fuels, lubricants, and products associated with motorized vehicles and equipment and gardening- or maintenance-related substances, or all of the above, SMBRF shall not cause or allow the presence, use, storage, or disposal of any hazardous substances on or about the PREMISES or any portion thereof without the prior written consent of LACFCD. In the event of spillage, leakage, or escape of any hazardous substance onto the PREMISES or any portion thereof, SMBRF shall immediately notify LACFCD by calling (800) 675-4357. If the spillage, leakage, or escape was caused by SMBRF, SMBRF shall promptly remove any such substance from the PREMISES or the affected portion thereof to LACFCD'S satisfaction. In addition to removing any of SMBRF'S hazardous substances, SMBRF shall be liable for and reimburse LACFCD for any and all cost and expenses that LACFCD may incur or suffer as a result thereof. Such responsibility shall include cost or expenses as LACFCD may incur by reason of Federal, State, local, or other authoritative agencies' laws and regulations. Notwithstanding the foregoing, SMBRF shall have no responsibility regarding any spill, leak, or escape associated with any of LACFCD'S tenants, licensees, or easement holders.

- [illegible]

Los Angeles County Flood Control District
Survey/Mapping & Property Management Division
P.O. Box 1460
Alhambra, CA 91802-1460
Telephone: (626) 458-7072
Fax: (626) 289-3618
Emergencies: (626) 458-HELP (4337)

Ms. Shelley Luce, Ph.D.
Executive Director
Santa Monica Bay Restoration Foundation
120 Broadway, Suite 105
Santa Monica, CA 90401
Telephone: (310) 305-9645, Extension 101
Fax: (310) 305-7985

IN WITNESS WHEREOF, the LOS ANGELES COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic, by order of its Board of Supervisors, has caused this USE AGREEMENT to be subscribed by the Chief Engineer of the LOS ANGELES COUNTY FLOOD CONTROL DISTRICT and attested by the Executive Officer of its Board of Supervisors and the SANTA MONICA BAY RESTORATION FOUNDATION has hereunto subscribed its names and the date and year first above written.

LOS ANGELES COUNTY FLOOD
CONTROL DISTRICT,
a body corporate and politic

By _____
Chief Engineer

APPROVED AS TO FORM:

ANDREA SHERIDAN ORDIN
County Counsel

By _____
Deputy

SANTA MONICA BAY
RESTORATION FOUNDATION,
a not-for-profit corporation

By _____
SHELLEY LUCE, P.h.D
Executive Director

APPROVED AS TO FORM:

By _____
Attorney

ACKNOWLEDGMENT FORM

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, before me, _____, Notary Public,
(insert name of the officer) (insert title of the officer)

personally appeared _____

(insert name(s) and title(s))

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

NOTARIES: ATTACH ADDITIONAL OR OTHER FORMS, IF REQUIRED

ACKNOWLEDGMENT FORM

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, before me, _____, Notary Public,
(insert name of the officer) (insert title of the officer)

personally appeared _____

(insert name(s) and title(s))

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)



Santa Monica Bay Restoration Foundation Ballona Creek Rain Gardens Premises Exhibit A



SPM-GIS Services



\\pwnas1\mpm\gis\projects\wmd\BallonaCreekRainGardens\BallonaCreekRainGarden_revA3.mxd-12-16-2010

Data contained in this map is produced in whole or part from the Los Angeles County Department of Public Works' digital database.

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Feet

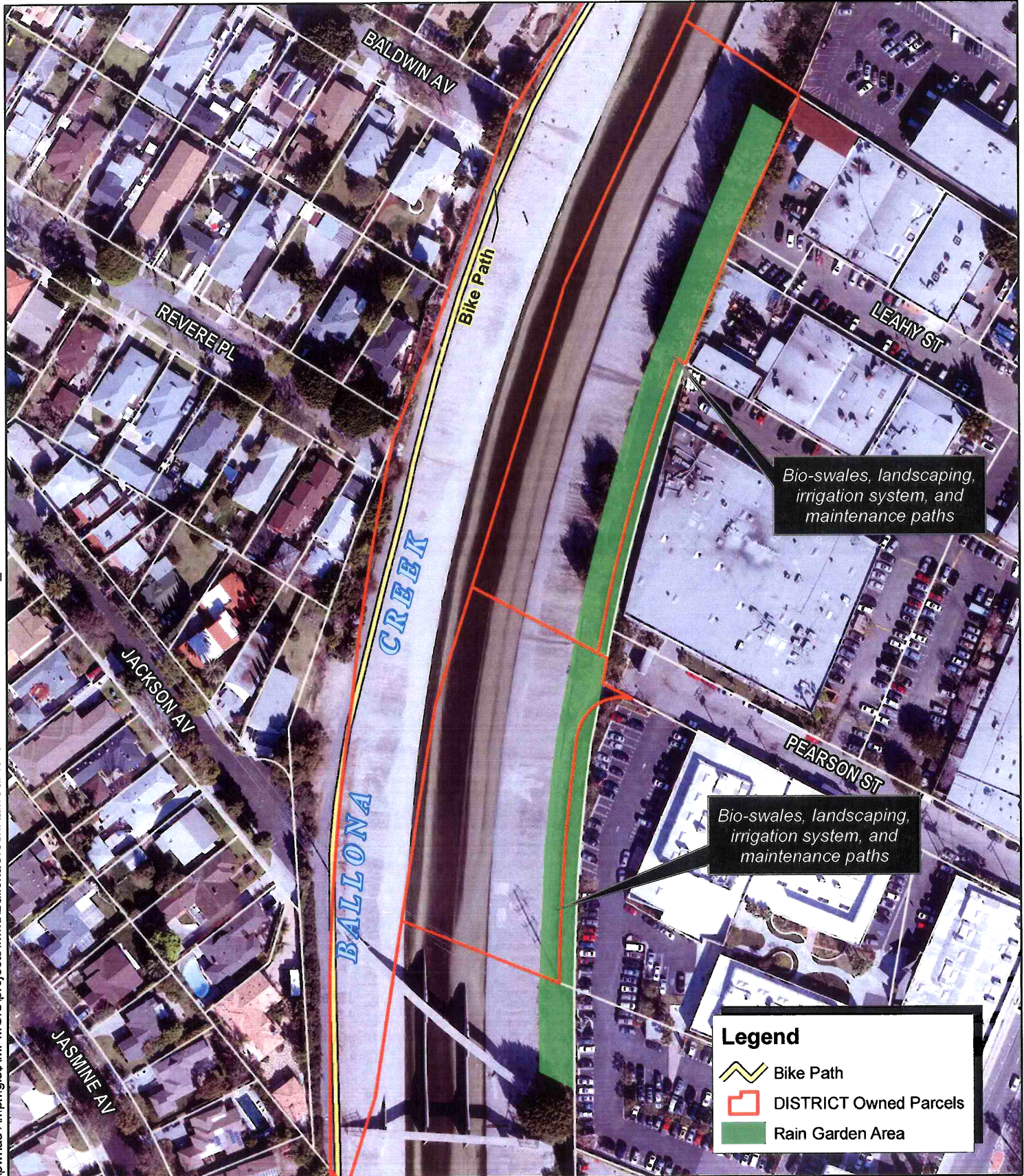
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Santa Monica Bay Restoration Foundation Ballona Creek Rain Gardens Improvements Exhibit B



SPM-GIS Services



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Data contained in this map is produced in whole or part from the Los Angeles County Department of Public Works' digital database.

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1
Feet

Legend

- Bike Path
- DISTRICT Owned Parcels
- Rain Garden Area

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